

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 12309 of 2004****For Approval and Signature:****HON'BLE MR JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DEPUTY EXECUTIVE ENGINEER - Petitioner(s)**Versus****VALLABHBHAI NATHUBHAI PATEL - Respondent(s)****Appearance :**

MR HD DAVE ASST GOVERNMENT PLEADER for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1.

CORAM :HON'BLE MR JUSTICE M.R. SHAH**Date : 12/07/2005****ORAL JUDGMENT**

1. . Though served, nobody appears on behalf of the respondent, hence, this Court has no other alternative but to decide and dispose of the matter exparte.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award dated 22.5.2002 passed by the Labour Court, Navsari in Reference (LCN) No.9 / 2001 by which the labour court has passed the order directing the petitioner to reinstatement respondent workman with backwages from April, 2000 with continuity of service.
3. The respondent raised an industrial dispute challenging the oral termination alleging interalia that he was serving as Driver to drive Roller, Jeep and Tractor since 31st December, 1983 and that he has worked for more than 240 days in each year from 1989 and that his service came to be terminated orally with effect from 17th January, 1998. It appears from the record that he has raised industrial dispute after a period of almost two years and three months i.e. 8-4-2000 and the same was referred to the labour court, Navsari for its adjudication which was numbered as Reference (LCN) No.9/ 2001. It appears from the record that though written statement was filed but nobody remained present on behalf of the petitioner to cross examine the respondent workman and accordingly as the evidence of the

respondent workmen was not challenged, the labour court, Navsari vide its judgment and award dated 22.5.2002 partly allowed the said reference by directing the petitioner to reinstate the respondent. However, considering the fact that the dispute was raised after a period of two years and three months i.e in April, 2000 directed to pay backwages only from April, 2000, however, directed to grant continuity of service. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri H.D.Dave, learned AGP appearing on behalf of the petitioner has vehemently submitted that the respondent workman has failed to prove that he has worked for more than 240 days as alleged and that in fact, he worked for more than 240 days continuously in last preceding calender year and therefore, the judgment and award passed by the labour court requires to be quashed and set aside.
5. He has further submitted that in fact, there is no specific finding given by the labour court that the respondent has worked for more than 240 days continuously in the last preceding year and that there was breach of Section 25-F of the Industrial Disputes Act. He has also

submitted that in absence of such specific finding given by the labour court, the labour court ought not to have passed the order directing the petitioner to reinstate the respondent workman and therefore, it is requested to allow the present special civil application.

6. It is true that nobody has remained present on behalf of the petitioner to cross examine the respondent workman and their right to cross examine the witness was closed. However, still the labour court was required to give a specific finding with regard to completion of 240 days and breach of Section-25-F of the I.D. Act and any other provisions of the Act. On going through the judgment and award passed by the labour court impugned in the present special civil application, it appears that there is no specific finding given by the labour court that the respondent workman has completed 240 days continuous service in last preceding years and that there is any breach of Section-25-F of the I.D. Act. The labour court has only held that there is breach of provisions of I.D. Act but there is no specific finding that under which provisions the breach committed and/or there is violation of Section-25-F and/or any other provisions. In absence of any specific finding with regard to the breach of the particular provisions, it was not open for the labour court to pass

award directing the petitioner to reinstate the respondent workman. Under the circumstances, the present special civil application is required to be allowed and the matter is required to be remanded to the Labour Court, Navsari for deciding the same afresh in accordance with law and after giving an opportunity to all the parties concerned again.

7. For the reasons stated above, the judgment and award passed by the Labour Court, Navsari dated 22.5.2002 passed in Reference (LCN) No.9 / 2001 is hereby quashed and set aside. The matter is remanded to the labour court, Navsari for deciding the same afresh in accordance with law and on merits after giving an opportunity to all the parties concerned.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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